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SEP 07 2005

**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

LUTHER L. JAMES, Clerk  
Deputy Clerk

**ELLEN SIMONETTI,  
Plaintiff,**

**v.**

**DELTA AIR LINES, INC.,  
Defendant.**

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§  
§

**ORIGINAL**  
**1:05-cv-2321**  
**CIVIL ACTION NO.**

**JURY TRIAL DEMANDED**

**JEC**

**COMPLAINT**

Plaintiff is a flight attendant who was employed by Delta Air Lines, Inc. She brings this action pursuant to the Civil Rights Acts of 1964 and 1991 (as amended) (42 U.S.C. §2000e *et seq*) (hereinafter collectively referred to as "the Act"), and the Railway Labor Act, (as amended) (45 U.S.C. §151 *et seq*) (hereinafter "the RLA") to obtain compensatory and punitive damages, reinstatement of her employment, reasonable attorneys' fees and costs of litigation.

1.

**INTRODUCTION**

Plaintiff was hired by Defendant as a flight attendant on October 31, 1996. Prior to September 25, 2004, Plaintiff had not been counseled, warned, suspended, terminated or otherwise disciplined in any manner by Defendant.

During 2000 and 2001, Plaintiff actively and openly participated in a union

ESPMs  
Counselor  
Proprietor  
The VBA Inc  
*[Signature]*

organizing drive conducted among Delta flight attendants by the Association of Flight Attendants (hereinafter referred to as "the AFA"). Defendant vigorously opposed this union organizing drive. Defendant was aware of Plaintiff's participation as a union organizer and supporter.

In January 2004, Plaintiff began an internet website blog titled "Diary of a Flight Attendant" at [www.queenofsky.net](http://www.queenofsky.net) (hereinafter "the website"). The website contains photographs of Plaintiff in a flight attendant uniform that did not indicate Defendant's name. The website also states Plaintiff's support for the AFA. Defendant has published no work rules or regulations concerning employee participation or appearance on websites.

On September 25, 2004, Defendant suspended Plaintiff without pay. On October 29, 2004, Defendant terminated Plaintiff effective November 1, 2004. Defendant informed Plaintiff that their decision to terminate her was based on "inappropriate photographs" of Plaintiff in her uniform on the website.

Similarly situated male employees of Defendant have also participated in and appeared in their Delta uniforms on internet websites and blogs. Delta is aware of such participation and appearances. Delta has taken no adverse employment action against such similarly situated male employees.

Defendant's actions constitute an illegal discharge and discrimination in

violation of §2000e-2(a)(1) of the Act and §152 Fourth of the RLA and unlawful retaliation in violation of §2000e-3 of the Act.

Subsequent to her removal from flight status, Plaintiff filed a Charge of Discrimination with the United States Equal Employment Opportunity Commission, (hereinafter referred to as “the EEOC”) in which she alleged that her discipline constitutes discrimination on the basis of sex in violation of the Act. On June 11, 2005, the EEOC issued a Right to Sue Letter within the meaning of 29 CFR §1601 (e)(1), which was received by Plaintiff on June 13, 2005.

### **JURISDICTION AND VENUE**

2.

This Court has jurisdiction over the present action under 42 U.S.C. §2000e-5(f)(3) and 29 U.S.C. §§1331 and 1337 because this case arises under the Civil Rights Acts of 1964 and 1991, and the Railway Labor Act, federal statutes that affect interstate commerce.

3.

Venue properly lies in the Northern District of Georgia under 28 U.S.C. §1391 and 42 U.S.C. §2000e-5(f)(3) because Defendant maintains its principal office in this judicial district

## **THE PARTIES**

4.

Plaintiff is a female citizen of the United States and of the State of Texas. At all time material hereto, Plaintiff has been a “person” within the meaning of 42 U.S.C. §2000e (a) and an “employee” within the meaning of 45 U.S.C. §§151 Fifth and 181

5.

Defendant is a for-profit corporation organized under the laws of the State of Delaware. At all times material hereto, Defendant has employed more than 500 employees; has been an “employer” within the meaning of 42 U.S.C. §2000(e)(b); and has been a “carrier” within the meaning of 45 U.S.C. §§151 First and 181.

## **FACTS**

6

Plaintiff was hired by Defendant as a flight attendant effective October 31, 1996.

7.

Prior to her suspension on September 25, 2004, Plaintiff had not been counseled, warned, suspended, terminated or otherwise disciplined by Defendant.

8.

During 2000 and 2001 the Association of Flight Attendants, a “representative” within the meaning of 45 U.S.C. §151 Fifth, (hereinafter “the AFA”), conducted a union organizing campaign among Delta flight attendants.

9.

Plaintiff was an open and vocal supporter of the AFA campaign. Defendant was aware of Plaintiff's activities on behalf of the AFA organizing campaign.

10.

In response to the AFA organizing campaign, Defendant devoted substantial resources to a self styled "union busting" effort.

11.

In January 2004, Plaintiff initiated an internet website blog titled "Diary of a Flight Attendant" at [www.queenofsky.net](http://www.queenofsky.net).

12.

In the spring and summer of 2004, Plaintiff posted some photographs of herself and other Delta flight attendants on the website. The website did not indicate that the subjects of the photos were employees of Defendant. The website did indicate, however, that Plaintiff was a supporter of the AFA.

13.

On Saturday, Sept. 25, 2004, Defendant suspended Plaintiff without pay.

14.

On October 8, 2004, Plaintiff filed a Charge of Discrimination with the EEOC. Upon review, the EEOC requested that the Plaintiff and Defendant participate in mediation. Defendant agreed to respond to the request for mediation by October 29, 2004.

15.

On October 29, 2004, Defendant terminated the Plaintiff, effective November 1, 2004.

16.

Several male employees of Defendant operate or have operated websites and blogs that identify them as employees of Defendant. Several other male employees of Delta have posted information on websites operated by others and have indicated in such posting that they are employees of Delta. Such websites and blogs also feature photographs of male employees of Defendant in Delta pilot, flight attendant and mechanic uniforms, aboard or in the vicinity of Delta aircraft. Delta is aware of the content of such websites and blogs, and has taken no adverse employment action against such male employees.

## **COUNT I**

### **DISCRIMINATION ON THE BASIS OF SEX**

17.

The allegations contained in paragraphs 1-16 above are incorporated by reference as if fully set out in this Paragraph.

18.

On September 25, 2004, Defendant intentionally suspended Plaintiff without pay on the basis of her sex, in violation of §2000e-2(a)(1) of the Act. In doing so, Defendant acted with malice or a reckless indifference for the Plaintiff's federally protected rights.

19.

As a result of Defendant's unlawful conduct as described in Paragraph 18 above, Plaintiff was denied pay based on her schedule for the remainder of September 2004 and for October 2004.

20.

As a result of Defendant's unlawful conduct as described in Paragraph 18 above, Plaintiff was denied the opportunity to receive compensation for work on scheduled days-off for the remainder of September 2004 and for October 2004

21.

As a result of Defendant unlawful conduct as described in Paragraph 18 above, Plaintiff has suffered and continues to suffer mental anguish and emotional pain and suffering.

22.

As a result of Defendant's unlawful conduct as described in Paragraph 18 above, Plaintiff has incurred the trouble, inconvenience and expense of attorneys fees and costs of litigation.

**COUNT II**  
**ILLEGAL RETALIATION AGAINST PLAINTIFF**

23.

The allegations contained in paragraphs 1-22 above are incorporated by reference as if fully set out in this Paragraph.

24.

Defendant intentionally terminated Plaintiff in retaliation for filing a Charge of Discrimination in violation of §2000e-3 of the Act. In doing so, Defendant acted with malice or a reckless indifference for the Plaintiff's federally protected rights.

25.

As a result of Defendant's unlawful conduct as described in Paragraph 24 above, Plaintiff has suffered and continues to suffer the loss of pay since November 1, 2004.

26.

As a result of Defendant's unlawful conduct as described in Paragraph 24 above, Plaintiff has suffered and continues to suffer mental anguish and emotional pain and suffering.

27.

As a result of Defendant's unlawful conduct as described in Paragraph 24 above, Plaintiff has incurred the trouble, inconvenience and expense of attorneys fees and costs of litigation.

### **COUNT III**

#### **DISCHARGE OF PLAINTIFF ON THE BASIS OF SEX**

28.

The allegations contained in paragraphs 1-27 above are incorporated by reference as if fully set out in this Paragraph.

29.

Defendant intentionally discharged Plaintiff on the basis of sex in violation of §2000e-2(a)(1) of the Act. In doing so, Defendant acted with malice or a reckless indifference for the Plaintiff's federally protected rights.

30.

As a result of Defendant's unlawful conduct as described in Paragraph 29 above, Plaintiff has suffered and continues to suffer the loss of employment compensation since November 1, 2004.

31

As a result of Defendant's unlawful conduct as described in Paragraph 29 above, Plaintiff has suffered and continues to suffer mental anguish and emotional pain and suffering.

32.

As a result of Defendant's unlawful conduct as described in Paragraph 29 above, Plaintiff has incurred the trouble, inconvenience and expense of attorneys fees and costs of litigation.

#### **COUNT IV**

#### **DISCHARGE OF PLAINTIFF IN VIOLATION OF RLA §152 FOURTH**

33.

The allegations contained in paragraphs 1-32 above are incorporated by reference as if fully set out in this Paragraph.

33.

Defendant intentionally discharged Plaintiff in order to interfere in the rights of employees to organize and bargain collectively through representatives of their choosing; interfere with the organization of its employees; and influence or coerce employees not to join or remain a member of a labor organization in violation of RLA §152 Fourth.

34.

As a result of Defendant's unlawful conduct as described in Paragraph 33 above, Plaintiff has suffered and continues to suffer the loss of pay since November 1, 2004.

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As a result of Defendant's unlawful conduct as described in Paragraph 33 above, Plaintiff has suffered and continues to suffer mental anguish and emotional pain and suffering.

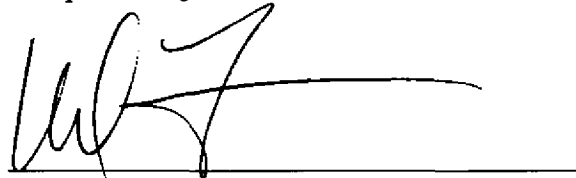
36.

As a result of Defendant's unlawful conduct as described in Paragraph 33 above, Plaintiff has incurred the trouble, inconvenience and expense of attorneys fees and costs of litigation.

WHEREFORE, Plaintiff respectfully prays:

1. That Plaintiff's claims be tried before a jury;
2. That the Court issue injunctive relief reinstating Plaintiff pursuant to §2000e-5(g) of the Act;
3. That Plaintiff be awarded compensatory damages in an amount to be determined at trial;
4. That Plaintiff be awarded punitive damages in an amount to be determined at trial;
5. That Plaintiffs be awarded attorneys fees and expenses of litigation from Defendant; and
6. For such other and further relief as the Court deems just and proper.


Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Kevin D. Fitzpatrick, Jr.', is written over a horizontal line.

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Attorney for Plaintiff

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**UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

**ELLEN SIMONETTI,**  
**Plaintiff,**

**vi.**

**DELTA AIR LINES, INC.,**  
**Defendant.**

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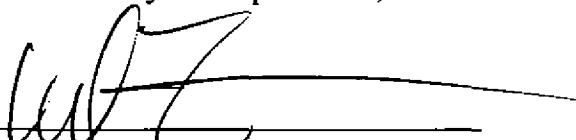
**CIVIL ACTION NO.**

**VERIFICATION**

Personally appeared **ELLEN SIMONETTI**, who after being duly sworn states that the facts set forth in the foregoing Complaint are true to the best of her knowledge and belief.

  
\_\_\_\_\_  
**ELLEN SIMONETTI**

Sworn to and subscribed before me  
this 6<sup>th</sup> day of September, 2005.

  
\_\_\_\_\_  
Notary Public

Commission Expires April 25, 2009